

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 13-10305-RWZ

DAVID ROMULUS, *et al.*,  
on behalf of themselves and all other persons similarly situated

v.

CVS PHARMACY, INC.

ORDER

June 29, 2015

ZOBEL, D.J.

Pending before me is defendant CVS Pharmacy, Inc.'s, motion to dismiss for lack of jurisdiction (Docket # 51). CVS argues this court lacks subject matter jurisdiction, as there is no live case or controversy in the matter as required by Article III of the United States Constitution, the plaintiffs' claims having been rendered moot by an unaccepted, pre-class certification Rule 68 Offer of Judgment. That question is the subject of a substantial circuit split,<sup>1</sup> but thus far unresolved in this jurisdiction. However, pending before the First Circuit Court of Appeals is Bais Yaakov of Spring

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<sup>1</sup> See, e.g., Charlesst v. Persion Acceptance Corp., Civ. No. 14-11937-RGS, 2015 U.S. Dist. LEXIS 81237 at \*3-12 (D. Mass. June 23, 2015) (collecting cases).

Valley v. ACT, Inc., No. 14-1789,<sup>2</sup> which is likely to decide the issue for the Romulus case as well.

In light of the probable dispositive nature of that appeal, the present action is stayed pending disposition of Bais Yaakov, No. 14-1789. See Microfinancial, Inc. v. Premier Holidays Int'l, Inc., 385 F.3d 72, 77 (1st Cir. 2004) ("It is apodictic that federal courts possess the inherent power to stay proceedings for prudential reasons.") (citing Landis v. North American Co., 299 U.S. 248, 254-55 (1936)).

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June 29, 2015

DATE

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/s/Rya W. Zobel

RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>I note that the Supreme Court is also poised to settle this issue. See Campbell-Ewald Co. v. Gomez, 2015 WL 241891 ("Questions Presented 1) Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete relief on his claim. 2) Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified."), cert. granted, Campbell-Ewald Co. v. Gomez, No. 14-857, 2015 WL 246885 (U.S. May 18, 2015).